

103^D CONGRESS
1ST SESSION

H. R. 3565

To provide regulatory incentives to promote national treatment by foreign countries to United States providers of certain financial and communications services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1993

Mr. MARKEY introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To provide regulatory incentives to promote national treatment by foreign countries to United States providers of certain financial and communications services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Trade in Services
5 Act of 1993”.

1 **TITLE I—FINANCIAL SERVICES**

2 **SEC. 101. EFFECTUATING THE PRINCIPLE OF NATIONAL**
3 **TREATMENT FOR SECURITIES BROKERS AND**
4 **DEALERS.**

5 The Securities Exchange Act of 1934 (15 U.S.C. 78a
6 et seq.) is amended by adding at the end the following
7 new section:

8 “NATIONAL TREATMENT

9 “SEC. 36. (a) PURPOSE.—This section is intended to
10 encourage foreign countries to accord national treatment
11 to United States brokers and dealers that operate or seek
12 to operate in those countries, and thereby end discrimina-
13 tion against United States brokers and dealers.

14 “(b) REPORTS REQUIRED.—The Secretary of the
15 Treasury shall, not later than December 1, 1994, and bi-
16 ennially thereafter, submit to the Congress a report—

17 “(1) identifying any foreign country—

18 “(A) that does not accord national treat-
19 ment to United States brokers and dealers; and

20 “(B) with respect to which no notice under
21 subsection (e)(1) is in effect;

22 “(2) explaining why the Secretary has not pub-
23 lished, or has rescinded, such a notice with respect
24 to that country; and

1 “(3) describing the results of any negotiations
2 conducted pursuant to subsection (d)(1) with respect
3 to that country.

4 “(c) DISCRETIONARY DETERMINATIONS.—The Sec-
5 retary may, at any time, publish in the Federal Register
6 a determination that a foreign country does not accord
7 national treatment to United States brokers or dealers.

8 “(d) NEGOTIATIONS REQUIRED.—

9 “(1) IN GENERAL.—The Secretary of the
10 Treasury shall initiate negotiations with any foreign
11 country in which, according to the report under sub-
12 section (b) or any determination under subsection
13 (c), there is a significant failure to accord national
14 treatment to United States brokers or dealers, to en-
15 sure that such country accords national treatment to
16 United States brokers and dealers.

17 “(2) NEGOTIATIONS NOT REQUIRED.—Para-
18 graph (1) does not require the Secretary of the
19 Treasury to initiate negotiations with a foreign
20 country if the Secretary—

21 “(A) determines that such negotiations
22 would be fruitless or would impair national eco-
23 nomic interests; and

24 “(B) gives written notice of that deter-
25 mination to the chairman and ranking minority

1 member of the Committee on Banking, Hous-
2 ing, and Urban Affairs of the Senate and of the
3 Committee on Energy and Commerce of the
4 House of Representatives.

5 “(e) SANCTIONS.—

6 “(1) SECRETARY’S NOTICE.—If negotiation
7 pursuant to subsection (d) with a foreign country
8 identified pursuant to subsection (b)(1) or (c) has
9 not attained national treatment for United States
10 brokers and dealers within 2 years after the date of
11 such identification, the Secretary of the Treasury
12 shall publish in the Federal Register a notice that
13 a foreign country does not accord national treatment
14 to United States brokers or dealers and that nego-
15 tiation has failed to attain such national treatment.

16 “(2) ACTIONS BY COMMISSION.—If the Sec-
17 retary of the Treasury has published in the Federal
18 Register (and has not rescinded) a notice under
19 paragraph (1) with respect to a foreign country, the
20 Commission shall, based upon the determination
21 concerning national treatment—

22 “(A) deny any application filed by a person
23 of that foreign country, or

1 “(B) prohibit any acquisition for which a
2 notice is required under paragraph (3) by a
3 person of that foreign country,
4 unless the Commission, in consultation with the Sec-
5 retary, determines, on the record after notice and
6 hearing, that such denial or prohibition is contrary
7 to the public interest.

8 “(3) NOTICE REQUIRED TO ACQUIRE BROKER
9 OR DEALER.—

10 “(A) IN GENERAL.—If the Secretary of the
11 Treasury has published in the Federal Register
12 (and has not rescinded) a notice under para-
13 graph (1) with respect to a foreign country, no
14 person of that foreign country, acting directly
15 or indirectly, shall acquire control of any reg-
16 istered broker or dealer unless—

17 “(i) the Commission has been given
18 notice 60 days in advance of the acquisi-
19 tion, in such form as the Commission shall
20 prescribe by rule and containing such in-
21 formation as the Commission requires by
22 rule or order; and

23 “(ii) the Commission has not prohib-
24 ited the acquisition.

1 “(B) COMMISSION MAY EXTEND 60-DAY
2 PERIOD.—The Commission may, by order, ex-
3 tend the notice period during which an acquisi-
4 tion may be prohibited under subparagraph (A)
5 for an additional 180 days.

6 “(C) EFFECTIVE DATE.—The require-
7 ments of subparagraph (A) shall apply to any
8 acquisition of control that is completed on or
9 after the date on which the notice under para-
10 graph (1) is published, irrespective of when the
11 acquisition was initiated.

12 “(4) REVIEW.—The Secretary of the Treasury
13 may, at any time, and shall, annually, review any
14 notice under paragraph (1) and decide whether that
15 notice should be rescinded.

16 “(f) NATIONAL TREATMENT DEFINED.—A foreign
17 country accords national treatment to United States bro-
18 kers and dealers if it offers them the same competitive
19 opportunities (including effective market access) as are
20 available to its domestic brokers and dealers.

21 “(g) PERSONS OF A FOREIGN COUNTRY DEFINED.—
22 A person of a foreign country is a person that—

23 “(1) is organized under the laws of that
24 country;

1 “(2) has its principal place of business in that
2 country;

3 “(3) in the case of an individual—

4 “(A) is a citizen of that country; or

5 “(B) is domiciled in that country; or

6 “(4) is directly or indirectly controlled by a per-
7 son described in paragraph (1), (2), or (3).

8 “(h) EXERCISE OF DISCRETION.—In exercising dis-
9 cretion under this section, the Secretary of the Treasury
10 and the Commission shall act in a manner consistent with
11 the obligations of the United States under a bilateral or
12 multilateral agreement governing financial services en-
13 tered into by the President and approved and implemented
14 by the Congress.”.

15 **SEC. 102. EFFECTUATING THE PRINCIPLE OF NATIONAL**
16 **TREATMENT FOR INVESTMENT ADVISERS.**

17 The Investment Advisers Act of 1940 (12 U.S.C.
18 80b–1 et seq.) is amended by adding at the end the follow-
19 ing new section:

20 “NATIONAL TREATMENT

21 “SEC. 223. (a) PURPOSE.—This section is intended
22 to encourage foreign countries to accord national treat-
23 ment to United States investment advisers that operate
24 or seek to operate in those countries, and thereby end dis-
25 crimination against United States investment advisers.

1 “(b) REPORTS REQUIRED.—The Secretary of the
2 Treasury shall, not later than December 1, 1994, and bi-
3 ennially thereafter, submit to the Congress a report—

4 “(1) identifying any foreign country—

5 “(A) that does not accord national treat-
6 ment to United States investment advisers; and

7 “(B) with respect to which no notice under
8 subsection (e)(1) is in effect;

9 “(2) explaining why the Secretary has not pub-
10 lished, or has rescinded, such a notice with respect
11 to that country; and

12 “(3) describing the results of any negotiations
13 conducted pursuant to subsection (d)(1) with respect
14 to that country.

15 “(c) DISCRETIONARY DETERMINATIONS.—The Sec-
16 retary may, at any time, publish in the Federal Register
17 a determination that a foreign country does not accord
18 national treatment to United States investment advisers.

19 “(d) NEGOTIATIONS REQUIRED.—

20 “(1) IN GENERAL.—The Secretary of the
21 Treasury shall initiate negotiations with any foreign
22 country in which, according to the report under sub-
23 section (b) or any determination under subsection
24 (c), there is a significant failure to accord national
25 treatment to United States investment advisers, to

1 ensure that such country accords national treatment
2 to United States brokers or dealers.

3 “(2) NEGOTIATIONS NOT REQUIRED.—Para-
4 graph (1) does not require the Secretary of the
5 Treasury to initiate negotiations with a foreign
6 country if the Secretary—

7 “(A) determines that such negotiations
8 would be fruitless or would impair national eco-
9 nomic interests; and

10 “(B) gives written notice of that deter-
11 mination to the chairman and ranking minority
12 member of the Committee on Banking, Hous-
13 ing, and Urban Affairs of the Senate and of the
14 Committee on Energy and Commerce of the
15 House of Representatives.

16 “(e) SANCTIONS.—

17 “(1) SECRETARY’S NOTICE.—If negotiations
18 pursuant to subsection (d) with a foreign country
19 identified pursuant to subsection (b)(1) or (c) has
20 not attained national treatment for United States
21 investment advisers within 2 years after the date of
22 such identification, the Secretary of the Treasury
23 shall publish in the Federal Register a notice that
24 a foreign country does not accord national treatment

1 to United States investment advisers and that nego-
2 tiation has failed to attain such national treatment.

3 “(2) ACTIONS BY COMMISSION.—If the Sec-
4 retary of the Treasury has published in the Federal
5 Register (and has not rescinded) a notice under
6 paragraph (1) with respect to a foreign country, the
7 Commission shall, based upon the determination
8 concerning national treatment—

9 “(A) deny any application filed by a person
10 of that foreign country, or

11 “(B) prohibit any acquisition for which a
12 notice is required under paragraph (3) by a
13 person of that foreign country,

14 unless the Commission, in consultation with the Sec-
15 retary, determines, on the record after notice and
16 hearing, that such denial or prohibition is contrary
17 to the public interest.

18 “(3) NOTICE REQUIRED TO ACQUIRE INVEST-
19 MENT ADVISER.—

20 “(A) IN GENERAL.—If the Secretary of the
21 Treasury has published in the Federal Register
22 (and has not rescinded) a notice under para-
23 graph (1) with respect to a foreign country, no
24 person of that foreign country, acting directly

1 or indirectly, shall acquire control of any reg-
2 istered investment adviser unless—

3 “(i) the Commission has been given
4 notice 60 days in advance of the acquisi-
5 tion, in such form as the Commission shall
6 prescribe by rule and containing such in-
7 formation as the Commission requires by
8 rule or order; and

9 “(ii) the Commission has not prohib-
10 ited the acquisition.

11 “(B) COMMISSION MAY EXTEND 60-DAY
12 PERIOD.—The Commission may, by order, ex-
13 tend the notice period during which an acquisi-
14 tion may be prohibited under subparagraph (A)
15 for an additional 180 days.

16 “(C) EFFECTIVE DATE.—The require-
17 ments of subparagraph (A) shall apply to any
18 acquisition of control that is completed on or
19 after the date on which the notice under para-
20 graph (1) is published, irrespective of when the
21 acquisition was initiated.

22 “(4) REVIEW.—The Secretary of the Treasury
23 may, at any time, and shall, annually, review any
24 notice under paragraph (1) and decide whether that
25 notice should be rescinded.

1 “(f) NATIONAL TREATMENT DEFINED.—A foreign
2 country accords national treatment to United States in-
3 vestment advisers if it offers them the same competitive
4 opportunities (including effective market access) as are
5 available to its domestic investment advisers.

6 “(g) PERSONS OF A FOREIGN COUNTRY DEFINED.—
7 A person of a foreign country is a person that—

8 “(1) is organized under the laws of that coun-
9 try;

10 “(2) has its principal place of business in that
11 country;

12 “(3) in the case of an individual—

13 “(A) is a citizen of that country; or

14 “(B) is domiciled in that country; or

15 “(4) is directly or indirectly controlled by a per-
16 son described in paragraph (1), (2), or (3).

17 “(h) EXERCISE OF DISCRETION.—In exercising dis-
18 cretion under this section, the Secretary of the Treasury
19 and the Commission shall act in a manner consistent with
20 the obligations of the United States under a bilateral or
21 multilateral agreement governing financial services en-
22 tered into by the President and approved and implemented
23 by the Congress.”.

1 **SEC. 103. FINANCIAL INTERDEPENDENCE STUDY.**

2 (a) INVESTIGATION REQUIRED.—The Securities and
3 Exchange Commission, in consultation and coordination
4 with the Secretary of the Treasury, and any other appro-
5 priate Federal agency or department to be designated by
6 the Securities and Exchange Commission, shall conduct
7 an investigation to determine the extent of the inter-
8 dependence of the securities industry and related financial
9 services sector of the United States and foreign countries,
10 and the economic, strategic, and other consequences of
11 that interdependence for the United States.

12 (b) REPORT.—The Securities and Exchange Commis-
13 sion shall transmit a report on the results of the investiga-
14 tion under subsection (a) within 2 years after the date
15 of enactment of this section to the President, the Con-
16 gress, the Secretary of the Treasury, and any other appro-
17 priate Federal agency or department as designated by the
18 Securities and Exchange Commission. The report shall—

19 (1) describe the activities and estimate the
20 scope of securities and related financial activities
21 conducted by United States firms in foreign mar-
22 kets (differentiated according to major foreign mar-
23 kets);

24 (2) describe the activities and estimate the
25 scope of securities and related financial activities
26 conducted by foreign firms in the United States (dif-

1 ferentiated according to the most significant home
2 countries or groups of home countries);

3 (3) estimate the number of jobs created in the
4 United States by securities and related financial ac-
5 tivities conducted by foreign firms and the number
6 of jobs created in foreign countries by securities and
7 related financial activities conducted by United
8 States firms;

9 (4) estimate the additional jobs and revenues
10 (both foreign and domestic) that would be created
11 by the securities and related financial activities of
12 United States firms in foreign countries if those
13 countries offered such firms the same competitive
14 opportunities (including effective market access) as
15 are available to those countries' domestic firms;

16 (5) describe the extent to which foreign firms
17 engaged in securities and related financial services
18 activities discriminate against United States persons
19 in procurement, employment, providing credit, or
20 other securities or related financial services, or oth-
21 erwise;

22 (6) describe the extent to which foreign firms
23 and other persons from foreign countries purchase
24 or otherwise facilitate the marketing from the Unit-

1 ed States of government and private debt instru-
2 ments and private equity instruments;

3 (7) describe how the interdependence of the se-
4 curities industry and related financial services sec-
5 tors of the United States and foreign countries af-
6 fects the autonomy and effectiveness of United
7 States monetary policy;

8 (8) describe the extent to which United States
9 companies rely on financing by or through foreign
10 firms, and the consequences of such reliance (includ-
11 ing disclosure of proprietary information) for the in-
12 dustrial competitiveness and national security of the
13 United States;

14 (9) describe the extent to which foreign firms
15 engaged in securities and related financial services
16 activities, in purchasing high technology products
17 such as computers and telecommunications equip-
18 ment, favor manufacturers from their home coun-
19 tries over United States manufacturers; and

20 (10) contain other appropriate information re-
21 lating to the results of the investigation under sub-
22 section (a).

1 **TITLE II—TELECOMMUNICA-**
2 **TIONS PRODUCTS AND SERV-**
3 **ICES**

4 **SEC. 201. EFFECTUATING THE PRINCIPLE OF NATIONAL**
5 **TREATMENT FOR PROVIDERS OF TELE-**
6 **COMMUNICATIONS PRODUCTS AND SERV-**
7 **ICES.**

8 The Communications Act of 1934 (47 U.S.C. 151 et
9 seq.) is amended by inserting after section 8 the following
10 new section:

11 “NATIONAL TREATMENT

12 “SEC. 9. (a) PURPOSE.—This section is intended to
13 encourage foreign countries to accord national treatment
14 to United States providers of telecommunications products
15 and services that operate or seek to operate in those coun-
16 tries, and thereby end discrimination against United
17 States providers of telecommunications products and serv-
18 ices.

19 “(b) NOTICE.—If—

20 “(1) by the conclusion of the negotiating period
21 determined under section 1376(c) of the Omnibus
22 Trade and Competitiveness Act of 1988, the Presi-
23 dent is unable to enter into an agreement under sub-
24 title A of title I of such Act which achieves the gen-
25 eral negotiating objectives described in section

1 1375(b) of that Act (as defined by the specific objec-
2 tives established by the President for that country);
3 or

4 “(2) the United States Trade Representative
5 has determined, under section 1377(a)(2) of that
6 Act, that any act, policy, or practice of a foreign
7 country that has entered into an agreement de-
8 scribed in section 1377(a)(1) of that Act—

9 “(A) is not in compliance with the terms of
10 such agreement, or

11 “(B) otherwise denies, within the context
12 of the terms of such agreement, to tele-
13 communications products and services of Unit-
14 ed States firms mutually advantageous market
15 opportunities in that foreign country;

16 the United States Trade Representative shall publish a no-
17 tice in the Federal Register identifying the foreign country
18 and stating the objective which was not achieved (as de-
19 scribed in paragraph (1)) or the act, policy, or practice
20 which is not in such compliance or which denies such mar-
21 ket opportunities (as described in paragraph (2)).

22 “(c) ACTIONS BY COMMISSION.—If the United States
23 Trade Representative has published in the Federal Reg-
24 ister (and has not rescinded) a notice under subsection
25 (b) with respect to a foreign country, the Commission

1 shall, based upon the failure to negotiate or the act, policy,
2 or practice identified in such notice, deny any application
3 filed by a person of that foreign country, unless the Com-
4 mission, in consultation with the United States Trade
5 Representative, determines, on the record after notice and
6 hearing, that such denial is contrary to the public interest.

7 “(d) APPLICATIONS SUBJECT TO EVALUATION.—The
8 applications referred to in subsection (c) include—

9 “(1) any license or other application, request
10 for authorization or waiver, notice, tariff, or other
11 document required to be filed for approval by the
12 Commission under this Act; and

13 “(2) in the case of equipment subject to type
14 acceptance or type approval, any certification or
15 other document required to be submitted to the
16 Commission.

17 “(e) REVIEW.—The United States Trade Representa-
18 tive may, at any time, and shall, annually, review any no-
19 tice under subsection (b) and decide whether that notice
20 should be rescinded.

21 “(f) DEFINITION.—A person of a foreign country is
22 a person that—

23 “(1) is organized under the laws of that coun-
24 try;

1 “(2) has its principal place of business in that
2 country;

3 “(3) in the case of an individual—

4 “(A) is a citizen of that country; or

5 “(B) is domiciled in that country; or

6 “(4) is directly or indirectly controlled by a per-
7 son described in paragraph (1), (2), or (3).”.

8 **SEC. 202. NATIONAL TREATMENT WITH RESPECT TO EX-**
9 **TENSION OF LINES.**

10 Section 214 of the Communications Act of 1934 (47
11 U.S.C. 214) is amended by adding at the end the following
12 new subsection:

13 “(e)(1) In making a determination of the public con-
14 venience and necessity with respect to an application filed
15 under this section, the Commission shall take into ac-
16 count—

17 “(A) for each country identified in the applica-
18 tion, whether carriers whose principal place of busi-
19 ness is the United States have equivalent oppor-
20 tunity to provide telecommunications services in
21 such country as the applicant seeks in the United
22 States; and

23 “(B) whether the country that is the principal
24 place of business of the applicant affords to carriers
25 whose principal place of business is the United

1 States opportunity to provide telecommunications
2 services that are comparable to the opportunity the
3 applicant seeks in the United States.

4 “(2) The Commission may, if it determines under
5 subparagraph (A) or (B) of paragraph (1) that there is
6 not equivalent or comparable opportunity to provide tele-
7 communications services, find that granting such applica-
8 tion is not in the public interest.”.

○

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